

DO NOT WRITE IN THESE SPACES

ORIGINAL

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

In re Applications of	)	MM Docket No. 94-10
	)	
THE LUTHERAN CHURCH/	)	File Nos. BR-890929VC
MISSOURI SYNOD	)	BRH-890929VB
	)	
For Renewal of the Licenses	)	
of Stations KFUO/KFUO-FM,	)	
Clayton, Missouri	)	

To: The Honorable Arthur I. Steinberg  
Administrative Law Judge

RECEIVED

JUL - 8 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

## OPPOSITION TO MOTION TO ENLARGE AND REQUEST FOR INJUNCTIVE RELIEF

The Lutheran Church-Missouri Synod (the "Church"), by its attorneys, hereby files its opposition to the "Motion to Enlarge, and for Injunctive Relief" filed by the Missouri State Conference of Branches of the NAACP, the St. Louis Branch of the NAACP, and the St. Louis County Branch of the NAACP (collectively, the "NAACP"). The Presiding Judge has already denied the request for injunctive relief. The Motion to Enlarge should also be denied because it is untimely as to proposed Issue Three, and lacks any factual or legal basis with regard to either proposed Issue Three or proposed Issue Four.<sup>1/</sup>

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<sup>1/</sup> Given the short length of this Opposition, the Church hereby requests waiver of the summary and table of contents requirements.

**I. PROPOSED ISSUE THREE**

**A. Background**

1. The NAACP alleges that the Church used Thomas M. Lauher, a former General Manager of KFUD-FM to obtain information regarding the NAACP's trial strategy by having him tape an interview requested by the NAACP. The Motion also alleges that the Church used the tape of the interview to prepare its direct case. Motion at 2. These allegations are without any factual support.

2. As shown by the declaration of Barry H. Gottfried, Esq., attached as Exhibit A, in preparing for the hearing the Church's counsel talked with many individuals whom the Church believed had knowledge of the facts relevant to the hearing issues. One of the individuals interviewed was Mr. Lauher, who served as the General Manager of KFUD-FM from May 1987 to July 1989. Church Exh. 6 at 1.

3. When it came time to select witnesses for the hearing, the Church decided that Mr. Lauher's testimony would be useful. Accordingly, the Church's counsel obtained a statement from Mr. Lauher on May 21, 1994 for its Direct Case presentation. See Church Exh. 6. On that date, Mr. Lauher informed the Church's counsel for the first time that he had also agreed to talk to a representative of the NAACP.

4. Subsequent to obtaining Mr. Lauher's statement, the Church's counsel contacted Mr. Lauher by telephone to determine his availability for the hearing. Mr. Lauher told the Church's counsel during that conversation that he had talked to the NAACP's representative. Mr. Lauher reported that he had been

asked whether he had been fired from his job at KFUD-FM because of memoranda he had written on the station's employment practices, and that he had told the NAACP's representative that his dismissal was not connected with those memoranda. Mr. Lauher mentioned that he had taped the interview. There was no further discussion of the NAACP's interview.

5. Mr. Lauher arrived in Washington, D.C. at approximately 9:30 p.m. on Sunday, June 19, 1994, just twelve hours before the beginning of the hearing the next morning. At a meeting with counsel for the Church that evening, Mr. Lauher provided a transcript of his interview with the NAACP to the Church's counsel. Counsel for the Church glanced over the ten page transcript, noted the routine nature of the questions and answers, but did not discuss the contents of the transcript with Mr. Lauher. A copy of the transcript is attached hereto as Exhibit B. No further attention was given the transcript until the next morning, when counsel for the NAACP raised the matter in his Motion.

#### **B. Argument**

##### **1. The Motion is Untimely as to Proposed Issue Number Three**

6. By his own admission, the NAACP's counsel knew on June 1, 1994 that Mr. Lauher had signed the May 21, 1994 statement submitted as part of the Church's direct case. Motion at 4. To the extent he believed that this required an enlargement of issues, Section 1.229 of the Commission's Rules allowed him fifteen days from the date of this "discovery" to request that the issues be enlarged. He was therefore required to file his

request by June 16, 1994. Instead, the NAACP waited and filed four days later, on the first day of hearing.

7. The NAACP argues that the delay should be forgiven, since only two of the four days were working days, and NAACP counsel was busy preparing his rebuttal case. But the fifteen day limit set by Section 1.229 does not allow the exclusion of weekends, so whether the four days following the due date were weekdays or weekends is not relevant to the timeliness of the motion.

8. The NAACP's counsel also argues that "there is good cause for that two working day delay: all of last week, counsel and his law clerk were each occupied fulltime (and generally more than doubletime) preparing the NAACP's 53-exhibit Rebuttal Case." Motion at 1-2. Even if true, that would only explain why the NAACP's counsel was unable to work on it "last week" (Sunday, June 12 to Saturday, June 18) -- it does not and cannot explain why research and drafting of the Motion could not have occurred in the eleven days between June 1 and June 12.<sup>2/</sup>

9. In short, the request to add Issue Three is grossly late and there is no excuse for that lateness. The request to add Issue Three should therefore be denied as untimely.

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<sup>2/</sup> By waiting until the first day of hearing to file the Motion, the NAACP prejudiced the Church. If the NAACP had filed its Motion on time, the Church's counsel would have been alerted that the NAACP was (unreasonably or not) concerned that its trial strategy would be revealed if the Church's counsel gained access to the details of the Lauher/NAACP interview. Counsel for the Church could have then declined to look at the transcript when it was offered the night before the hearing, thus mooting this entire matter.

2. There Is No Factual or Legal Basis to Add Issue Three

- a. The NAACP Has Failed to Present any Facts Demonstrating That the Church Even Sought to Obtain Information as to the NAACP's Trial Strategy, Much Less Used "Deception and Trickery" to Obtain Such Information

10. The NAACP, as the party seeking to add issues, bears the burden of presenting a prima facie case that a relevant factual issue exists. 47 C.F.R. § 1.229; United Broadcasting Co., 93 FCC2d 482, 491-92 (1983). Where, as here, a motion to enlarge is based on speculation, the requested issues should not be added. Garrett, Andrews & Letizia, Inc., 86 FCC2d 1172, 1176 (Rev. Bd.) review denied, 88 FCC 2d 620 (1981).

11. Stripped to its essence, the Motion states only that Thomas Lauher is being called as a witness by the Church, that the NAACP interviewed Mr. Lauher, and that the Church's counsel and other witnesses "must have had and used the tape of the [NAACP]/Lauher meeting." Motion at 6 (emphasis in original). While the first two statements are fact, the third statement does not follow from those facts, and the Motion contains no additional information whatsoever to demonstrate that the tape was used by the Church or that the substance of the interview was obtained by trickery.

12. Despite this complete lack of a factual basis, the NAACP accuses the Church of "one of the most outrageous and brazen examples of abusive behavior ever indulged [sic] by a renewal applicant." Motion at 5. The closest the motion ever comes to addressing the need for facts to support its allegations is its assertion that the alleged scheme is "self evident." Id. However, all of the evidence available indicates that such a

conspiracy never existed, and not a single fact has been submitted by the NAACP to indicate otherwise. Far from being "self evident," the alleged conspiracy is an entirely unproven figment of the imagination.

13. By filing such a baseless Motion, the NAACP's counsel has abused the Commission's processes. To accuse both the Church and its counsel of "theft" and "trickery" without basis is unconscionable. Lacking as it does any demonstrated factual basis, the request to add the proposed Issue Three should be promptly denied.

**b. The Requested Issue Is Moot Since Neither Counsel Nor any Other Witness Had Prior Access to the Substance of the Lauher/NAACP Interview**

14. As discussed above, counsel for the Church did not receive a copy of the interview transcript until literally hours before the beginning of the hearing. This was almost three weeks after the Church's direct case testimony was exchanged and the transcript could therefore not have affected the Church's direct case in any way. More to the point, in response to questions asked of nearly every witness by NAACP counsel, not a single witness (except of course for Mr. Lauher) indicated that they had any knowledge concerning the content of the Lauher/NAACP interview. Thus, not only was the direct case testimony of the Church's witnesses unaffected, but their testimony on cross-examination was also unaffected.

15. As to the knowledge of the Church's counsel, the NAACP is reduced to arguing that the receipt of the transcript less than twelve hours before Mr. Lauher was scheduled to testify gave away the NAACP's trial strategy, whereas the NAACP's cross-

examination of Mr. Lauher just a few hours later would not have provided comparable insight into that strategy. This is nonsense.

16. As to Mr. Lauher himself, once the NAACP chose to interview him, it obviously forfeited any right to complain that he heard the questions that were asked. Moreover, since he was not interviewed by the NAACP until after his declaration, to be used as a direct case exhibit, was executed, the NAACP cannot argue that Mr. Lauher's direct case testimony was affected.

17. In short, neither the Church's counsel nor any witness knew prior to the eve of hearing the substance of the Lauher/NAACP interview other than Mr. Lauher himself, and he was certainly entitled to that information, having agreed to talk to the NAACP about the case. It is therefore impossible for the NAACP to argue that it was prejudiced in any way by Mr. Lauher's actions.

**c. As an Independent Witness, Mr. Lauher Was Free to Take Any Action He Wished With Information Acquired During an Interview**

18. The NAACP's Motion is replete with references to Mr. Lauher as being controlled by the Church, with the suggestion being that the Church conspired with Mr. Lauher to trick the NAACP. As shown at the hearing, however, Mr. Lauher is certainly no agent of the Church. He is not a Lutheran, nor is he dependent on the Lutheran Church for any reason, business or otherwise. Tr. 134, 111-12.

19. Similarly, although Mr. Lauher was the first witness to testify at the hearing, this was not because he was the "lead" witness for the Church as has been suggested by the NAACP, but

because he had informed counsel for the Church that he was only available on that date. See Tr. 71.

20. While the Motion alleges theft of attorney work product through Mr. Lauher, the attorney work product doctrine merely prevents the compelled production of private trial preparations of opposing counsel during discovery. Fed. R. Civ. P. 26(b)(3); Raveesh K. Kumra, 5 FCC Rcd 5607, 5607-08 (Rev. Bd. 1990). In the present case, the work product doctrine simply does not come into play. The NAACP's questions to third-party witness Lauher were no more "private" or "work-product" than any other questions asked in public (e.g., questions asked in a deposition or in open court). What occurred then was not a theft of attorney work product, but the voluntary disclosure by a non-party witness of his conversation with an NAACP representative, which was taped with the NAACP's consent. Moreover, even assuming solely for the sake of argument that the NAACP's questions of Mr. Lauher did constitute attorney work product, the NAACP surely waived any right to the questions' confidentiality by releasing them to a third party.<sup>3/</sup>

21. It should be noted that one of the counsel for the Mass Media Bureau stated at hearing that he had previously contacted Mr. Lauher, asked him whether he had been contacted by the NAACP, and asked him what questions the NAACP had asked. Tr. 86. Thus, unlike the Church's counsel, who were merely handed the

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<sup>3/</sup> At the interview, the NAACP never asked Mr. Lauher whether he had met earlier with the Church's counsel. (Tr. 127). If the NAACP was really concerned about the privacy of its communications, it would surely have taken this minimal step.



transcript by Mr. Lauher on the eve of hearing, the Mass Media Bureau affirmatively sought before the hearing to determine what questions the NAACP asked of Mr. Lauher. Such questioning is wholly proper.

22. In sum, the NAACP knew during its interview of Mr. Lauher that he was making a recording of the conversation, both questions and answers. The NAACP should therefore have refrained from asking "private" questions if it was concerned about revealing them to the public or opposing counsel. The NAACP cannot now complain that Mr. Lauher disclosed its questions to others.<sup>4/</sup>

**d. Conclusion as to Proposed Issue 3**

23. The request to add the proposed Issue Three was untimely filed and raises no issues relevant to the renewal applications of KFUD(AM) and KFUD-FM. Mr. Lauher, as a non-party witness, was free to make any use of the information from the interview that he desired. Moreover, witness after witness testified that they knew nothing about the Lauher/NAACP interview so there was no "harm" to the NAACP's ability to cross-examine

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<sup>4/</sup> For the sake of completeness, it should be noted that the premise of the NAACP's Motion -- the idea that its trial strategy can be discerned from the interview questions -- is difficult to understand, to say the least. The transcript of the conversation between Thomas Lauher and the NAACP's Michael Blanton is nearly incomprehensible. A copy of that transcript is attached hereto as Exhibit B. It is difficult based on the transcript to imagine what the "twenty questions" that the Motion indicates were given to Blanton to ask could have been. See Motion at 4. Most of the conversation appears to involve questions to Mr. Lauher about documents bearing Mr. Lauher's name that were produced in discovery. Asking a witness about the documents produced in discovery that bear his name could hardly be called a "theory of the case".

them at trial. The request to add the proposed Issue Three is without substance and should be denied.

## **II. PROPOSED ISSUE FOUR**

### **A. Background**

24. The Motion also seeks to add a proposed Issue Four alleging that one of the Church's witnesses sought to dissuade an NAACP witness from testifying. Specifically, the Motion contains a declaration from NAACP witness Otis D. Woodard suggesting that Dennis Stortz, KFUD's Director of Operations, offered to let him make public service announcements on KFUD and intimated that future employment with the station might be available.

25. Attached hereto as Exhibit C is the declaration of Dennis Stortz relating to the telephone calls at issue, and repudiating any allegation by the NAACP that he attempted to dissuade Mr. Woodard from testifying. The core of the declaration is as follows:

26. In February of 1994, Mr. Stortz received a letter from Mr. Woodard, whom he had met numerous times previously, expressing an interest in working on-air at KFUD. Mr. Stortz interviewed Mr. Woodard on March 1, 1994. Mr. Stortz's notes of the interview as well as a copy of Mr. Woodard's resume submitted to the station are attached to the Declaration as part of Exhibit C. Mr. Stortz told Mr. Woodard that he would be considered for future job openings at KFUD.

27. Several weeks later, Mr. Stortz received a telephone message from Mr. Woodard. When he returned the call, Mr. Woodard was not available. Later that day, Mr. Woodard's wife called

Mr. Stortz. When Mr. Stortz told her that he had received a message earlier in the day indicating that Mr. Woodard wanted to talk with him, Mr. Woodard's wife indicated that she was sure the reason for the call was to discuss again his desire to work at KFUD. Mr. Stortz later received another call from Mr. Woodard asking if he would be interested in receiving an "air check" tape from Mr. Woodard. Mr. Stortz said yes and Mr. Woodard personally delivered the tape to him at the station shortly thereafter.

28. On June 15, 1994, Mr. Stortz received a telephone message from Mr. Woodard asking him to call Mr. Woodard immediately. Mr. Stortz called and was told by Mr. Woodard that the NAACP had contacted him to talk about KFUD. Mr. Woodard said that he wanted to find out what was going on. Mr. Stortz told Mr. Woodard that the NAACP had made EEO allegations against the station.

29. The next day, June 16, 1994, Mr. Stortz called Mr. Woodard to ask how the interview with the NAACP had gone. Mr. Woodard stated that the NAACP had asked about a "referral source" and that he did not know what they meant by that. During that call, Mr. Woodard once again expressed his interest in working at KFUD. He did not tell Mr. Stortz that he had given a statement to the NAACP nor did Mr. Stortz ask whether he had done so.

30. On June 17, 1994, at about 3:00 p.m. Central Time, in reference to Mr. Woodard's "referral source" comment of the day before, Mr. Stortz called Mr. Woodard to note that KFUD's records indicated that Mr. Woodard's Outreach Ministry had been used by KFUD as a referral source, but that the station records indicated

that the specific person talked to at the Outreach Ministry was Kathy Woodard. When asked, Mr. Woodard indicated that Kathy Woodard was his ex-wife. Mr. Woodard then indicated that it was possible that Kathy Woodard would have handled referral contacts without discussing it with him.

31. In discussing various matters during the call, Mr. Stortz indicated that he would be glad to air public service announcements for Mr. Woodard's Outreach Ministry if Mr. Woodard would send some to the station. This was not unusual since Mr. Stortz generally offers such announcements to non-profit organizations when he talks to them. It is particularly unremarkable with regard to Mr. Woodard, since Mr. Woodard had already been on KFUD(AM) a number of times promoting his Outreach Ministry as a public service. During the call, Mr. Woodard reminded Mr. Stortz of his desire to work at KFUD. As he had done previously, Mr. Stortz indicated that Mr. Woodard would be considered for job openings as they occurred. Mr. Stortz again did not ask whether Mr. Woodard had given a statement to the NAACP, and Mr. Woodard did not volunteer that information.

32. A few hours after that call, Mr. Stortz learned for the first time that Mr. Woodard had given a statement to the NAACP and would be a NAACP witness. Mr. Stortz learned of this information at about 5:30 p.m. on Central Time June 17, 1994, shortly after the NAACP's hearing exhibits were delivered to the Church's counsel in Washington. Mr. Stortz has not talked with Mr. Woodard since that time.

**B. Argument**

33. Quite simply, there is no factual basis for the addition of proposed Issue Four. Mr. Woodard's declaration does not state that Mr. Stortz made any references in their communications to Mr. Woodard's testifying, much less that Mr. Stortz attempted to dissuade Mr. Woodard from testifying. The reason that no reference was made about Mr. Woodard testifying is obvious -- at the time of the phone calls, Mr. Stortz had no idea that Mr. Woodard had been asked by the NAACP to be a witness.

34. Similarly, that Mr. Stortz had discussed employment at KFUD with Mr. Woodard during the phone calls at issue is not surprising since Mr. Woodard had applied for employment at KFUD, the matter had been discussed in several prior phone calls between the two individuals, and Mr. Woodard's resume and air check tape were on file at the station. No reference was made to any connection between employment at KFUD and Mr. Woodard's involvement with the NAACP's litigation effort.

35. Finally, Mr. Stortz's offer to air public service announcements for Mr. Woodward's Outreach Ministry was not unusual, particularly since Mr. Woodard had previously appeared on KFUD(AM) to promote his ministry.

**C. Conclusion as to Issue 4**

The facts do not support the addition of proposed Issue 4: the NAACP has failed to meet its burden to demonstrate that Mr. Stortz attempted to dissuade Mr. Woodard from testifying for the NAACP. The request to add proposed Issue Four should therefore be denied.

**III. CONCLUSION**

For the reasons set forth herein, there is no basis to add the requested issues and the Motion should therefore be promptly denied.

Respectfully submitted,

THE LUTHERAN CHURCH-MISSOURI  
SYNOD

By: 

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Dated: July 8, 1994

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**EXHIBIT A**

## DECLARATION OF BARRY H. GOTTFRIED

I, Barry H. Gottfried, hereby state as follows:

1. I am a partner at the firm of Fisher Wayland Cooper Leader & Zaragoza, L.L.P. and have been one of the attorneys involved in the hearing concerning renewal of the licenses of KFUA(AM) and KFUA-FM, Clayton, Missouri (the "Stations").

2. In preparing for the hearing, I and other counsel talked with many individuals whom the Lutheran Church-Missouri Synod (the "Church") believed had knowledge of the facts relevant to the hearing issues. One of the individuals we interviewed was Thomas M. Lauher, who served as the General Manager of KFUA-FM from May 1987 to July 1989.

3. When it came time to select witnesses for the hearing, the Church decided that Mr. Lauher's testimony would be useful. Accordingly, I and another attorney, Kathryn R. Schmeltzer, obtained a statement from Mr. Lauher on May 21, 1994 for the Church's Direct Case presentation. On that date, Mr. Lauher informed us for the first time that he had also agreed to talk to a representative of the NAACP.

4. Subsequent to obtaining Mr. Lauher's statement, we contacted Mr. Lauher by telephone to determine his availability for the hearing. Mr. Lauher told us during that conversation that he had talked to the NAACP's representative. Mr. Lauher reported that he had been asked whether he had been fired from his job at KFUA-FM because of memoranda he had written on the station's employment practices, and that he had told the NAACP's representative that his dismissal was not connected with those memoranda. According to Mr. Lauher, after he gave that answer



the NAACP's representative appeared deflated and the interview had gone nowhere. Mr. Lauher mentioned that he had taped the interview. We had no further discussion of the NAACP's interview.

5. Mr. Lauher arrived in Washington, D.C. at approximately 9:30 p.m. on Sunday, June 19, 1994, twelve hours before the beginning of the hearing the next morning. At a meeting with Ms. Schmeltzer and me that evening, Mr. Lauher provided us with a transcript of his interview with the NAACP to the Church's counsel. We both glanced over the ten page transcript. We noted the routine nature of the questions and answers. We did not discuss the contents of the transcript with Mr. Lauher. We did not give any further attention to the transcript until the next morning, when counsel for the NAACP raised the matter in his motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 1994.



Barry H. Gottfried

**EXHIBIT B**

Q & A With Representative from Law Firm representing NAACP

Q: What I wanted to ask you first is...umm...did you work for the station for two years? Is that correct? Or longer than that?

A: No. I worked from...a little over a year. I would say it was approximately mid May of '88 to mid to late July '89.

Q: OK. Do you think that your doing these forms had anything to do with your being let go?

A: No.

Q: OK. I'm just wondering since they possibly were in compliance for some things and maybe another person trying to put them into compliance might have...

A: No.

Q: OK. Not that you remember or you know that wasn't the reason. OK. Well, let's see. OK, on page five at the top you've got there are certain procedures forms, job descriptions that were introduced that inadvertently put the station in a non-compliance situation. Do you recall what those were?

A: Well, I think as I read over the...this memo, it was...

Q: Yeah, I think it is.

A: ...It stated either before or after that in terms of the one phrase it had been inadvertently left off a revised employment application form which was just nothing more than one of those things that occasionally happen. Something was dropped.

What I was referring to there, in general, is based on the premise of the memo which is it's our plan. In terms of our plan, since it was at that time a plan for both the AM and the FM stations. As a result, there were some legitimate requirements for portions of the AM station staffing that would require some religious...specific religious knowledge, but had nothing to do with the FM which was the only thing I was responsible for. By eliminating that phrase, we may be violating...what, indeed we were doing, which was we were not discriminating on the basis of race or religion or anything else...

Q: OK.

A: ...in terms of the FM.

Q: Talking about that clause...

A: Right. In terms of the FM.

Q: OK. Because you did have that...the phrase was eliminated, you're saying, for the AM station, but it was also being used for the FM station applications also?

A: It was just an inadvertent..

Q: OK.

A: There wasn't any intent behind it. We were, in my opinion anyway, following the proper guidelines and so stated in the EEO policy. That (phrase) had been left off of there.

Q: OK. Then you say on the next page you should do separate hiring...applications...what we were just talking about.

A: I wasn't saying separate hiring, as such. In that I had talked with the counsel for the station at the time who is referred to here...

Q: Kranberg.

A: Marcia Kranberg, regarding the nature of the two radio stations. One a religious station. One a non-religious station. I was the general manager for the FM station only. The two stations were operating under one Equal Employment Opportunity policy. My question was "Is that the best way or should they have each their own..."

Q: Right.

A: ...which given the nature of the distinctly different approaches to the AM and the FM station, this was a legitimate question. Let's clarify this and see.

Q: OK.

A: And although, as I recall, I think Marcia had recommended that that might be a clearer way to go, at least in my tenure, as I recall anyway, the stations continued under the one EEO policy.

Q: Yeah, that's what she's talking about a thing called bona-fide occupation qualification like Chinese waiters can be hired for a Chinese restaurant...Italians for Italian...

A: There were certainly some of those for the AM station.

Q: Right. Yeah.

A: The question was, what impact, if any, might that appear to have on the FM. She certainly wasn't strong, saying yes that must be done.

Q: Just had a suggestion, not a requirement.

A: Right.

Q: OK. Down here on page seven, "I've discovered we are operating in violation of our own policies currently on file. I have reason to believe this applies to the AM operation as well as the FM operation." Next page. "I've taken steps in good faith to insure full compliance in FM. I shared with Jerry Householder those steps taken on FM." What steps were taken on FM? Do you remember?

A: Well, as I recall there were two things that I had discovered. One is the gentleman's name for both stations who was responsible for the EEO implementation who was no longer involved with the operation.

Q: Was this Abatie?

A: Yes. And secondly, again...I certainly remember that we needed to reinstate our phrase on the...on...

Q: The equal opportunity.

A: ...on the employment application itself. Third, there was some contradiction on the application form, since it was used for both stations and, therefore, legitimate in certain positions to ask about religion...getting back to the discussion with Marcia...for those positions that were clearly FM positions I felt it was necessary to not have those for the FM applications.

Jerry Householder, I forget...

Q: May I ask you a question?

A: Yeah.

Q: OK. Were these...the religious things we were just talking about...were they questions or requirements that were on the...

A: I don't really recall. Again, it wasn't really within my scope of responsibility because my responsibility was strictly with the FM. The only reason I even touched on the AM here is that there were things that were combined, so I had to touch on them.

Q: Right. You wanted them separated?

A: I had to touch on them, but I had no responsibility whatsoever for the AM.

Q: OK. I just wondered if you recalled.

A: No. And Jerry Householder...I don't remember his title. He was involved strictly in the AM station operation, which is why...he at the time...I guess was the one who was...there was no general manager of the AM station. I'm just trying to recall. I guess he was the person that had some authority at the time. But I don't remember.

Q: OK. This page nine, other areas. Job descriptions should be job specific, held to a minimum and be completely objective...next page...accordingly, the job descriptions for KFUD-FM have been reviewed and changed where necessary. What was the problem beforehand? Do you recall?

A: Well, based on what I've said here, and in attempting to recall, obviously I thought some things were not as specifically and completely objective as they might have been at the time. Specifics...I recall thinking more in terms that the language within the job descriptions could be sharpened. I'm having a hard time citing anything real specific...

Q: OK.

A: At this point if I had some copies of this...

Q: I was just thinking it's too bad that they didn't send me pre and post...

A: Yeah.

Q: ...job descriptions.

A: I hate to speculate, because I don't want to imply the speculation was on either the one that existed or the way it was revised. To give an example of something I think would be subjective...I suspect if you had down a good typist, as opposed to a typist who can do 65 words a minute correctly...

Q: Right.

A: One would be subjective, two would be specific.

Q: Right.

A: It was that sort of thing that...

Q: An objective, like you were saying, as opposed to what's good, you know.

A: Right.

Q: Somebody brings me coffee, you know. Every time I ask for something, you know, there's so many typos in the paper.

Alright. Now, on the second sheet. The memo that you sent to Paul Devantier. Do you want to take a look at that for a minute, also?

A: Sure.

Q: Do you recall...I'm sorry to interrupt you...if you were still working for the station when the...was your license up for renewal when you were still employed, or were you gone by the time that occurred?

A: Well, the seminar I referred to somewhere...in this one...

Q: Right. In this document.

A: ...was held in very late '88 in preparation for the renewal process. I don't recall when the actual renewal date was. If it was after July, '89, then I wasn't there.

Q: OK. I think it was actually in the Fall of '89. I was just trying to find out the parameters.

A: Then I was not there at that time.

Q: OK. Alright. If July, and it was post-July...what was your last day there? Do you remember?

A: No. Sometime in the middle of July, '89.

Q: OK. Alright. That's fine.

A: Certainly it must be on somebody's record somewhere.

Q: OK.

A: I don't recall.

Q: OK. Just to save you time, I forgot to tell you on this the parts I'm interest in are the general part, the FCC purposes parts...

A. Anything that doesn't have a check?

Q: And...well no there are some we're not interested in. And then finally the hiring. They're the major ones. OK. On the very first page, the one that's not checked, establishing an EEO officer. Did your company have an EEO officer at the station?

A: Well, the reason that wasn't checked...if you go back to the cover sheet. I guess there were some 130 things on this suggested...

Q: Not applicable?

A: Well, the 41 remaining ones were still being reviewed at the time this memo was prepared. So that doesn't mean anything one way or the other. We just hadn't gotten to them yet. But, I would think the reason that particular one had not been checked off is that we were still in the process of determining if we should remain...when I say we in this case it really wasn't my decision as the FM general manager...but if the Lutheran Church Missouri Synod would continue with one EEO policy for both stations or have two separate ones. In either case, the gentleman who was named in the combined EEO policy which was in effect was no longer there. At the least we needed to do... I think I recommended somewhere...we needed to have someone who was there designated.

Q: I'm sorry. His name was Abatie? Is that right?

A: Abatie.

Q: Was he the person that occupied this position earlier or

was he...

A: Yes. He had been the one who occupied that position earlier.

Q: OK.

A: So that was just who will occupy it at this point. Waiting for a final decision.

Q: OK. What were your personnel files like at the...

A: Well, personnel files were maintained in a central location by the Lutheran Church Missouri Synod. So the reason that wasn't checked is that they were not really part of what I would have been...they would not have been easily accessible to me. That doesn't mean they were being hidden or anything...

Q: Right. It would just take time to get them.

A: Right. So someone else would have to be doing any reviewing at that point to make sure everything was OK.

Q: OK. I'm sorry, what was the name of the city you said where they were located?

A: I'm sorry, who?

Q: The central location where the files were kept. You said the personnel files were kept in a central location at Lutheran Synod headquarters.

A: The Lutheran Church Missouri Synod is located on South Kirkwood Road. I believe that's within Kirkwood.

Q: OK.

A: And the Synod retained control over personnel. Now whether the personnel files were somewhere at the radio station facilities...for the broadcasters on AM or FM...or at the Synod building location, I'm not sure.

Q: OK.

A: I don't recall. But, again, in the situation where there was some concern about the AM, under which I had no authority or responsibility, then the personnel records for that portion of the operation would not be within my scope anyway.

Q: OK. Further down...the next one. Include a copy of your EEO program in personnel manuals and employee handbooks. Was that policy not done before you came there and implemented after you were there?

A: I don't remember. By not having a check here...again...that didn't imply that it had not been done. It just simply meant that as of this date we haven't gone through the entire check list process. This was a "Here's where we are now" memo to demonstrate where we were in following through... just a review.

Q: OK. So what about the next one?

A: Well, I think it had been successfully communicated. We certainly, in the time I was there, had hired more women and hired minority. Again...

Q: But...

A: ...under the basis of an AM and FM one EEO plan, I could only speak for the FM.

Q: Right. OK. But, just under the FM, for awhile the work applications were missing this statement, right?

A: The work applications, as I recall, for awhile were missing

that statement.

Q: And you changed them while you were in charge.

A: Yes.

Q: OK.

A: That was just one of those oversights, nothing more than that.

Q: But, that was done before...the oversight occurred before you got there and after you were there you corrected it.

A: Yeah.

Q: OK.

A: As I recall, there had been some revisions in the employment applications and sometimes that happens.

Q: OK. Do you know if the station kept a list of recruitment sources used in seeking qualified female and minority applicants?

A: I'm...as I can recall...there was one kept.

Q: OK. Do you recall if you analyzed the type of...

A: We reviewed it on occasion. Again, I thought we were doing pretty well, as best as I could tell. We were getting a variety of applicants.

Q: OK. We're in records of all referrals. Were they, do you recall?

A: That I don't really recall, because when it comes right down to it, the final hiring decisions were not within the general managers scope of responsibilities within the FM station. So, there could have been.

Q: Whose responsibilities were those?

A: The ultimate responsibility for hiring?

Q: Uh-uh.

A: Paul Devantier.

Q: He wouldn't send you a written record that I've decided to hire this person or I haven't decided to hire this person because of such and such a reason?

A: I don't recall that part of the process. Ultimately, anyone that he would have made the final decision on would have come through a...the total effort. All I'm suggesting is that since the final approval and final decision came from him, there could have been some referrals that went directly to people in his office that I wasn't aware of on the FM side. I don't know of any I wasn't aware of.

Q: Alright. And I guess you would answer affirmatively to the next one, since you were changing things around there...conduct a continuing review of...

A: I think we did that and did that well on the FM.

Q: OK. I'm going to write that down...write that down that you're basically talking about the FM...so I talked about.

A: Well, yeah, I think that would be an important distinction. To neither mislead me, you or whoever it is you're referring to. I cannot speak on the AM side.

Q: OK. And how about...did you...was Paul Abatie there when you got there or was he already gone?

A: He was gone.



Q: So the next two questions you wouldn't know.

A: Well, correct. Again, there was no one specifically in the position of general manager for the AM station. And the slot for director of broadcast ministries, a position I reported to within the structure of things, and the AM general manager reported to, was also vacant at this particular time. So, although both stations were going to face renewal at the same time together, my responsibility was clear in terms of the FM. I certainly felt reluctant to step in to areas where...a...it was not within the scope of things and...b...it was an area where I wasn't familiar with anyway.

Q: OK. How many managers did you guys have at this station?

A: At a time, or over a period of...

Q: On a regular basis.

A: Well, there would be...the structure was...there was a general manager for KFUD-FM...

Q: Uh-Uh.

A: ...and during the time we've been talking about...roughly May of '88 to July of '89...middle of each of those two months roughly...I was the FM general manager. There was a position for an AM general manager as well that was vacant at the time I was there at the FM station. And each of those two positions reported to the position of director of broadcast ministries. And that position was vacant at the time of these...you know...memos that we are looking at.

Q: Can I...I'm sorry...who was the person you reported to?

A: So I was reporting to Paul Devantier. I forget what Reverend Devantier's title was at the time. But he would have, in essence, been the person the director of broadcast ministries would report to.

Q: OK. And do you know if he was aware of the EEO obligations that he had to follow?

A: I would certainly think he was.

Q: OK.

A: He certainly gave me every indication that he wanted to make sure the FM station was in full compliance with our own policy.

Q: OK. Did you document all of your EEO efforts that you made?

A: As I recall, all of our efforts in the hiring process had been documented in terms of ads placed, applicants received. That kind of documentation was really maintained in a central file for both stations. That's my recollection, anyway.

Q: OK. Also, taking these two documents as an example, if we would consider these EEO efforts...to compile EEO efforts, were there any other things that you did that weren't documented as far as implementation or changes in policy or anything like that?

A: No, I don't think so. I thought at the time that our efforts were good. Some of the administrative detail perhaps...for one reason or another as we already talked about...needed to be improved.